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THE DEFINITION OF WASTE FROM A LEGAL POINT OF VIEW

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Abstract

The definition of waste as it is provided for by the EC and adopted along these lines in all EC member states is a mixture of objective and subjective criteria. There is no one single and clear solution, thus in case of debate a case-by-case analysis shall be used. The waste lists are only relevant for proper record-keeping and reporting, they do not provide an absolute enumeration. Waste may also be taken as good, and as according to waste strategy priorities, waste is intended as much as possible for recovery operation, thus the possibility of recovery itself is not enough to leave it out from the scope of waste definition. Anyhow, the protection of human health and the environment shall first be taken into consideration and if waste regulations provide a better position for these objectives then this shall be used.

Keywords: waste definition, waste list, waste as good, recovery.

1. Waste – Definition for the Public

Everybody has some ideas about the definition of waste. Some are closer to the reality, some are not, but in most of the cases the popular belief is that waste means something which is not in use or useless at all, thus which is a burden, which may not even have a value. We have to get rid of the waste as soon as possible.

This understanding is reflected in the different dictionaries. Here we cite three well-known publications. Under the website 'wordreference.com' we find the following definition: 'waste: any materials unused and rejected as worthless or unwanted'.

In the Merriam-Webster OnLine Dictionary (www.m-w.com) waste is taken as:

a: damaged, defective, or superflous material produced by a manufacturing process: ...
b: refuse from places of human or animal habitation.

In the online version of Cambridge dictionary (www.dictionary.cambridge.org) it is taken as 'unwanted matter or material of any type, often that which is left after useful substances or parts have been removed.'

All these definitions correspond with the general feeling of the public. But is it not enough to use such very general terms: it is necessary to go a bit further

and find a way to more precise definitions, in the present article to legal definitions. It is of vital importance to understand what is the real legal meaning of waste, as several obligations – you may find some examples later - are connected with this. Thus the legal meaning is not identical with the general understanding, as we may see below.

2. Waste in Legal (Regulatory) Meaning

Waste means, according to the 1991 amendments of the 75/442 directive[1] on waste: 'any substance or object in the categories set out in annex I which the holder discards or intends or is required to discard.' The given annex lists 16 categories of wastes, from the off-specification products to machining/finishing residues or residues of industrial processes. The 14th category is probably the broadest: 'products of which the holder has no further use on (e.g. agricultural, household, office, commercial and shop discards, etc.).' The 16th category refers to the relative inability of legal documents to determine the waste categories: 'any materials, substance or products which are not contained in the above categories'.

The Hungarian Act on Waste Management[2] uses the same terms, taken from the Community language, the definition itself and all the annexes – the waste categories, the list of disposal and recovery operation, etc. – all correspond to EC law.

Popular definitions – as we could already see – of waste were connected to things, materials, substances, etc. that are generally useless or at least momentarily useless. Later on, it became more and more clear that waste contains a lot of elements that require us to call it 'secondary raw material'. As an example, we may mention the increasing shortage of copper, what is why it may become essential to use copper residues in waste. Thus waste should no longer be taken as a useless or unnecessary thing we have to get rid of.

If we wish to understand why waste definition is so important, we have to look at the legal requirements, attached to such definition. The main general obligations in waste management are summarized in article 4 of the waste framework directive:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- without risk to water, soil and plants and animals,
- without causing a nuisance through noise or odours,
- without adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.'

[1] Council directive 75/442 on waste as amended by the 91/156 directive

[2] Act XLIII of 2000

To provide a short survey of the most important legal instruments, used to reach the abovementioned purpose, we may speak about the following sequence of legal obligations:

- The principles, priorities and general requirements provide the general part of the waste management and waste treatment system.
- The next step is the planning of waste management, the waste treatment system determining the main line of implementation and administrative enforcement.
- Next to the planning, authorization is the basic condition of waste treatment activities, and there are only some exceptions under the general authorization requirement. The authorization determines the most important conditions of the activities and it also provides an option for the authorities to control these activities.
- The obligations of notification, reporting, record-keeping and information are all different components of one general obligation.
- The supervision by the authorities covers the control of conditions provided by the authorization and also the control of accuracy of reported data.
- In the field of those optional consequences in case of negative results of the supervision, the use of liability provisions is the most direct reaction.

Soon after the general waste legislation, the first directive on a specific waste-category requiring special treatment was the EC directive 78/319 on toxic and dangerous waste. This has been substantially amended and replaced by directive 91/689 on hazardous waste. The object of this directive is similar to the other EC directives, that is to approximate national laws of the Member States, what means this time the controlled management of hazardous waste. As this directive forms the basis for a number of further legislative pieces and drafts in Europe – at least its definitions are widely used – it is important to clarify the basic issues.

Again the first problem is to find a proper definition of hazardous waste. It proved to be impossible to find one generally accepted definition, with the generation and the quality of waste being so different. Thus the directive had to follow the most accepted way, and to provide characteristics within annexes as the basis of deciding whether a given waste is hazardous or not. The directive contains three annexes all referring to one another. Therefore finding out about the quality of waste needs at least double-checking.

Annex I lists the categories or generic types of hazardous wastes according to their nature or the activity which generated them, for example mineral oils or oily substances, or metallic dust, etc. The list of Annex I may not be seen as isolated, but should be used for the first group of waste together with Annex III, and for the second together with Annex II and Annex III. Annex II lists those constituents of waste which render them hazardous when they have the properties described in annex III. Some examples of Annex II are: asbestos, PCB, copper compounds, etc.

Annex III gives the inventory of those properties of waste which render them hazardous. As this inventory is highly sophisticated, giving not only the properties but also their definitions, it is useful to enumerate these properties: explosive,

oxidizing, highly flammable, flammable, irritant, harmful, toxic, carcinogenic, corrosive, infectious, terratogenic, mutagenic, ecotoxic. From among the great number of properties, we introduce here only the 'ecotoxic' property as being a new one. Those substances and preparations are ecotoxic 'which present or may present immediate or delayed risk for one or more sectors of the environment'.

It would be the best to give some examples in order to make the annexes better understood. Our first example is from the Annex I A, the example of wood preservatives. In this group of Annex I there should be some property added to this generic waste category from the list of Annex III. Thus the residues of wood preservatives are taken as hazardous waste only if they are flammable.

In group B of annex I two other conditions should be met to characterize the given waste as hazardous. Thus the sludge from water purification plants is not hazardous waste by its own quality, unless it contains phosphorus (Annex II) and is infectious (Annex III). This investigation process is more useful to prove that some material is hazardous waste, than having just one list mentioning, for example, subsidies only.

If we go along with the legal regulations, our next step is the list of wastes. Commission decision 94/3 dealt with the establishment of a list of wastes. As being a decision, this list is directly applicable to the Member States or any natural or legal person within the Community. The decision was made to clarify the different categories of waste that are mentioned in article 1 par. (a) of directive 75/442 on waste. The introductory notes to the decision underline among others:

'3. The EWC (European Waste Catalogue - author's remark) is a harmonized, non-exhaustive list of wastes, that is to say, a list which will be periodically reviewed and if necessary revised in accordance with the committee procedure.

However, the inclusion of a material in the EWC does not mean that the material is a waste in all circumstances. The entry is only relevant when the definition of waste has been satisfied...

5. The EWC is to be a reference nomenclature providing a common terminology throughout the Community with the purpose to improve the efficiency of waste management activities...

6. The EWC will be subject to adaptation to scientific and technical progress...'

The Commission Decision 2000/532/EC adopted the new waste list, repealing the original Decision 94/3/EC on the European Waste Catalogue and the Decision 94/904/EC on the hazardous waste list[3]. The purpose is to integrate the different waste lists. The different types of waste in the list are fully defined by the six-digit code for the waste and the respective two-digit and four-digit chapter headings. If none of these waste codes apply, the waste must be identified under a special procedure. Any waste marked with an asterisk (*) is considered as a hazardous waste.

[3]Commission Decision of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste

Directive 1999/31/EC of 26 April 1999 on the landfill of waste is a relatively new product of EU waste management legislation. This directive is the first which classifies waste legally in a more general way, what means that there are four classes of waste, which require separate treatment:

- 'municipal waste' means waste from households, as well as other waste which, because of its nature or composition, is similar to waste from household;
- 'hazardous waste' means any waste which is covered by the directive 91/689/EEC on hazardous waste;
- 'non-hazardous waste' means waste which is not covered by the previous paragraph;
- 'inert waste' means waste that does not undergo any significant physical, chemical or biological transformations. Inert waste will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not endanger the quality of surface water and/or groundwater;

We may also mention the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, which was adopted in Basel in 1989. The convention does not cover the definition of waste, but leaves it to the Parties. Article 2 on definitions gives the destination of these substances or objects – 'which are disposed of or are intended to be disposed of or are required to be disposed of'. Of course, the convention does not want to leave this problem unsolved, therefore there are three annexes attached to the convention that represent the minimum set of waste.

These annexes look similar to the EEC regulations, but they are not always the same. Annex I gives the categories of waste to be controlled, where two groups are mentioned: waste streams (such as waste resulting from surface treatment of metals and plastics) and waste that is characterized by its constituents, as for example, mercury or mercury compounds. Annex III, listing the hazardous characteristics, is more or less the same as in the case of the EEC directive. We may mention as a difference, that there is no distinction made in the convention between flammable and highly flammable categories. Furthermore, the convention lists new elements, such as 'organic peroxides' or 'poisonous'. These two annexes have to be taken into consideration together. Parties have to inform the Secretariat on their national definitions. Annex II gives two types of waste as being 'other waste' in terms of the convention – these are: waste collected from households and residues arising from the incineration of household waste.

Thus, we may come to the conclusion that we do not have a direct definition, which may give us guidance under any circumstances, but there is always a need to look more into the given case if there is any doubt. The best way how to understand

this requirement for a possible case-by-case analysis is to look at the practice of the ECJ.

3. Waste as Understood in Jurisprudence

The most commonly accepted case law in Europe is the jurisprudence of the European Court of Justice (ECJ). There are a lot of cases which are connected with waste legislation and from among them there is also a great number, which deals – directly or indirectly – mostly with the definition of waste.

Looking at the EC legislative wording, no wonder that there are so many cases in front of the Court, as this definition is far from being satisfactory, and it is also clear from what I described above, that neither the general waste classification, nor the waste list is very helpful for those who wish to have certainty. Thus it is mostly for the ECJ to provide some interpretation of the definition.

One of the first landmark cases in the history of Community environmental law was the 'ADBHU' case[4], the most interesting part of which is the interpretation of Community purposes[5]. The case had been referred to the ECJ for preliminary ruling from the Tribunal de grande instance, Créteil.

The main issue here is the interpretation of the provisions on the disposal of waste oils, which is the subject of Council Directive 75/439. The directive provides that Member States must take necessary measures to ensure the safe collection and disposal of waste oils, preferably by recycling (regeneration and combustion). Collecting or disposing waste oils requires a permit for that purpose. France implemented the directive by legislation, the most important piece of which is decrees 79–981 of 21 November 1979. The approved collector has to deliver all waste oils to an approved disposal undertaking which also received an approval of the Minister of Environment for the disposal. Approved disposal undertakings must treat the waste oils in their own plants, or their approval may be withdrawn.

The French Procureur de la République asked the Tribunal de la grande instance, Créteil, to dissolve the Association de defense de bruleurs d'huiles usagées. The association was created in 1980 in order to defend the interests of manufacturers, dealers and users of stoves and heating appliances which are designed to burn fuel oil and waste oils. According to the Procureur, the principal object of the association was unlawful inasmuch as it encouraged persons to commit an offence

[4]Case no. 240/83 – Procureur de la Republique vs Association de défense des bruleurs d'huiles usagées

[5]Here we have to mention that at the time of the present case, so at the time ot the Treaty of Rome, the Treaty did not have direct reference to environmental protection, and the general provisions of Articles 100 and 235 were used. The broader was Article 253(190) which reads: 'Regulations, directives and decisions (adopted jointly by the European Parliament and the Council, and such acts) adopted by the Council or the Commission shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this treaty.' In the ADBHU case, the Court accepted the validity of such references.

determined in decrees 75–633, namely to burn waste oils without the necessary approval. The association contested the validity of the provision of the directive as regards to the principles of freedom of trade, the free movement of goods and free competition. The Tribunal referred the case to the Court of Justice for preliminary ruling.

The opinion of the Commission was that protection of the environment against the risk of pollution constitutes an object of general interest. It is also clear that rules concerning the disposal of waste oils had become necessary because of the potential danger for the environment and human health represented by the indiscriminate discharge of such oils into the environment or their uncontrolled use. The oils in question are dangerous in particular because of the additives and heavy metals which they contain. They may also emit several air pollutants when they are combusted. The directive establishes a preventive control of the disposal of waste oils through the prior authorization.

The court stated that it was apparent that the French legislation permitted the incineration of waste oils only in industrial installations, thereby prohibiting any other form of incineration. The main aim of the directive is the disposal of waste oil in a manner which is safe for the environment. It also follows from the directive according to the court that Member States shall prohibit any form of waste-oil disposal which has harmful effects on the environment. Thus the directive compels states to set up an effective system of prior approval and subsequent inspections.

The court stated that the provisions of the directive cannot be considered to be contrary to the principle of free competition. One of the most important arguments of the court was that 'measures prescribed by the directive do not create barriers to intra-Community trade, and that in so far as such measures, in particular the requirement that permits must be obtained in advance, have a restrictive effect on the freedom of trade and of competition, they must nevertheless neither be discriminatory nor go beyond the inevitable restriction which are justified by the pursuit of the objective of environmental protection, which is the general interest.'

This judgment also meant that the used oil, intended for further utilization may be taken as a waste, thus nothing prevents us not to take something which may also be useful as waste, if the original holder does not want to use it any longer.

Some years later the Court also defined[6] in Oscar Traen case why it is so important to use the specific legislation of waste management, instead of using the system of secondary raw-materials. In the given case also a preliminary ruling question had to be decided by the European Court.

According to the judgement, the essential objective of the directive is the protection of human health and the environment, and any event would be endangered if the application of measures for the control and supervision of such activities were to be conditional upon distinctions based on criteria such as the company objects of the undertaking, whether a disposal of waste is a main or subsidiary activity or the foreseeable impact on the environment. Consequently, any operator engaging in any of the activities referred to in articles 8 to 12 of the directive 75/442 is subject

[6]C-372-374/85 - Ministère Public vs Oscar Traen and Others

of the measures provided for in those provisions.

If we go along the chronological order of the ECJ judgment, we find an other preliminary judgement case[7] – Vessosso-Zanetti. This case also follows the main line of interpreting the waste definition. The two persons are hauliers, who collect, transport and store products for other people, which the Italian public authorities qualify as urban and special waste. The question arose in the context of two criminal prosecutions brought against a number of haulage contractors who were charged with transporting substances on behalf of third parties without obtaining prior authorization, thereby infringing the Italian law, which was adopted in order to transpose directive 75/442 and directive 78/319 into national law.

The defendants argued that the substances transported did not constitute waste within the meaning of the presidential decree, which in article 2 defines waste as 'any substance or object produced by human activity or natural processes which is, or is intended to be, abandoned'. They claimed that the substances were capable of economic re-utilizations and were not therefore abandoned or intended to be abandoned. The Pretura learning that the decree was to implement the Community directives, decided that the best would be to refer the problem of the waste definition to the Court of Justice.

The court first referred to the preambles of the directives. The fourth recital of the preamble of directive 75/442 and the fifth recital of the preamble of directive 78/319 both stress the importance of encouraging the recovery of waste and the use of recovered materials in order to conserve natural resources.

Also the second indent of article 1(b) of directive 75/442 and the second indent of article 1(c) of directive 78/319 provide that waste disposal is to be understood as including the transformation operations necessary for the recovery, reuse and recycling of waste. Finally, article 3(1) of directive 75/442 and article 4 of directive 78/319 require Member States to take appropriate measures to encourage the prevention, recycling and processing of waste, the extraction of raw material and possibly energy therefrom and any other process for the reuse of waste. It is clear from these provisions that a substance the holder disposes of may constitute waste within the meaning of both directives when it is capable of economic reutilization.

The second part of the question here was to ascertain whether the concept of waste presumes that a holder disposing of a substance or an object intends to exclude all economic reutilization of the substance or object by others. Articles 1 of each of the directives refer generally to any substance or object which the holder disposes of, and draws no distinction according to the intentions of the holder disposing thereof. Moreover, those provisions specify that waste also includes substances or objects which the holder 'is required to dispose of pursuant to the provisions of national law in force'.

The essential aim of both directives, set out in their preambles in the third and fourth recitals respectively, namely the protection of human health and the safeguarding of the environment, would be jeopardized if the application of those

[7] In case no. 207/88 the court had to address a preliminary ruling in criminal proceeding pending before the Pretura di Asti against G. Vessosso and G. Zanetti.

directives were dependent on whether the holder intended to exclude all economic reutilization by others of the substances or objects which he disposed of.

Consequently, the final judgement was that the concept of waste is not to be understood as excluding substances and objects which are capable of economic reutilization. The concept does not presume that the holder disposing of a substance or an object intends to exclude all economic reutilization of the substance or object by others.

Some years later the Court went even further on. In a waste shipment case[8] – within which the prohibition of waste shipment by the Wallonian region was the main question – the ECJ referred to the freedom of movement of goods provision. According to its view Art. 30 and 36 of the Treaty are also important as the waste may also be taken as good which has a value – first of all in case of reuse and reutilization. Thus the free movement of goods may sometimes be valid for waste, too. As one distinguished professor of EC environmental law wrote at this time: 'Recently in *Commission v. Belgium*, the Court of Justice faced the critical question whether waste was to be regarded as 'good' in the context of the EEC Treaty. Despite arguments that the court should distinguish between recyclable and non-recyclable waste, the court held that all the waste had to be treated as 'good'.'[9]

The same interpretation has been reinforced a bit later in other judgments, such as the Tombesi and others case[10].

'54. The answer to the questions referred to the Court must therefore be that the concept of 'waste' in Article 1 of Directive 75/442, as amended, referred to in Article 1(3) of Directive 91/689 and Article 2(a) of Regulation No 259/93 is not to be understood as excluding substances and objects which are capable of economic reutilization, even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists. In particular, a deactivation process intended merely to render waste harmless, landfill tipping in hollows or embankments and waste incineration constitute disposal or recovery operations falling within the scope of the abovementioned Community rules. The fact that a substance is classified as a re-usable residue without its characteristics or purpose being defined is irrelevant in that regard. The same applies to the grinding of a waste substance.'

If we now look an other perspective of waste definition than the concept of 'good' from the point of view of possible recovery, then one recent and important decision of the ECJ has also been adopted in a preliminary ruling case – Korkein hallinto-oikeus (Finland) referred the case for a preliminary ruling in the proceed-

[8] C–2/90 – Commission v. Belgium

[9] JANS, Jan H.: Waste Policy and the European Community Law: Does the EEC Treaty Provide a Suitable Framework for Regulating Waste ?' Ecology Law Quarterly, University of California, Vol. 20, no. 1. p. 167.

[10] Joined cases C–304/94, C–330/94, C–342/94 and C–224/95 – Criminal proceedings against Euro Tombesi and Adino Tombesi, Roberto Santella, Giovanni Muzi and others and Anselmo Savini. Reference for a preliminary ruling: Pretura circondariale di Terni – Italy.

ings pending before that court[11] – the Palin Granit case.

The questions raised in appeal proceedings challenging the grant of an environmental licence to a company, Palin Granit Oy, to operate a granite quarry. Under Finnish law, the municipal authorities are not competent to grant an environmental licence for a landfill and, consequently, the outcome of the main proceedings depends on whether leftover stone resulting from stone quarrying is to be regarded as waste.

According to the ECJ the question whether a given substance is waste must be determined in the light of all the circumstances, regarding the aim of Directive 75/442 and the need to ensure that its effectiveness is not undermined (*ARCO Chemie Nederland*, paragraphs 73, 88 and 97).

Neither the fact that the leftover stone has undergone a treatment operation referred to in Directive 75/442 nor the fact that it can be reused thus suffices to show whether that stone is waste for the purposes of Directive 75/442. Therefore, it appears that leftover stone from extraction processes which is not the product primarily sought by the operator of a granite quarry falls, in principle, into the category of 'residues from raw materials extraction and processing under head Q 11 of Annex I to Directive 75/442.

It therefore appears that, in addition to the criterion of whether a substance constitutes a production residue, a second relevant criterion for determining whether or not that substance is waste for the purposes of Directive 75/442 is the degree of likelihood that that substance will be reused, without any further processing prior to its reuse. If, in addition to the mere possibility of reusing the substance, there is also a financial advantage to the holder in doing so, the likelihood of reuse is high. In such circumstances, the substance in question must no longer be regarded as a burden which its holder seeks to 'discard', but as a genuine product.

The answer to the main question asked by the national court must therefore be that the holder of leftover stone resulting from stone quarrying which is stored for an indefinite length of time to await possible use discards or intends to discard that leftover stone, which is accordingly to be classified as waste within the meaning of Directive 75/442.

More or less the same line could continue in an other preliminary ruling case – Reference to the Court ECJ by the Korkein hallinto-oikeus (Finland) for a preliminary ruling in the proceedings brought before that court by AvestaPolarit Chrome Oy, formerly Outokumpu Chrome Oy, on the interpretation of Articles 1(a) and 2(1)(b) of Council Directive 75/442/EEC of 15 July 1975 on waste.[12]

AvestaPolarit applied to the Environment Centre for an environmental licence, in order to be able to continue its mining and processing activity on the site at issue in the main proceedings, which had been operated for about 30 years and was due to change gradually from open-cast to underground mining from 2002. About 100 million tonnes of leftover rock is already stored around the mine. It is envisaged that after 70 to 100 years part will be used to fill in the underground parts of the mine,

[11] C–9/00 sz – Palin Granit

[12] C–114/01: AvestaPolarit Chrome Oy, former Outokumpu Chrome Oy

but that the stacks will be landscaped before that. Part of the stacks could remain on the site indefinitely. Only a small proportion of the leftover rock, about 20%, will be processed into aggregates. The stacks already stored cannot be used for aggregates but may possibly be used as filling material in constructing breakwaters and embankments.

Since the residues and by-products resulting from the mine are not as such immediately reused or consumed, they are to be regarded as waste within the meaning of the Law on waste. In so far as the residues and by-products to be discarded are recovered immediately as such (inter alia by returning them to the mine), they are not regarded as waste.

The Court stated, that a distinction must be drawn between residues which are used without first being processed in the production process for the necessary filling in of the underground galleries, on the one hand, and other residues, on the other. The former are being used in that case properly as a material in the industrial mining process and cannot be regarded as substances which the holder discards or intends to discard, since, on the contrary, he needs them for his principal activity. Beside such a case, if a mining operator can identify physically the residues which will actually be used in the galleries and provides the competent authority with sufficient guarantees of that use, those residues may not be regarded as waste. As regards the residues whose use is not necessary in the production process for filling in the galleries, they must in any event be regarded in their entirety as waste.

Thus, not only the possibility of being sold or used should be there, but this possibility shall be a close one with a great degree of certainty.

A different perspective is represented in the a preliminary ruling case from the Court d'appel de Bruxelles (Belgium), in the criminal proceedings before that court against Paul Van de Walle, Daniel Laurent, Thierry Mersch and Texaco Belgium SA[13]. This perspective is focusing on the possible extension of the scope of waste. The essence of the case is that the groundwater is saturated with hydrocarbons at a Texaco service station, operated by a manager under an 'operating agreement' and this leads to the contamination of the soil. The Belgian court was in doubt, however, whether subsoil contaminated as the result of an accidental spill of hydrocarbons could be considered waste.

According to the Court, hydrocarbons which are unintentionally spilled and cause soil and groundwater contamination are waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991. The same is true for soil contaminated by hydrocarbons, even if it has not been excavated.

4. Summary

If now I would like to give a short summary on what is the waste from a legal point of view, then it is not possible to answer this question in a concise way. The

[13] Case C–1/03

definition of waste as it is provided for by the EC and adopted along these lines in all EC Member States is a mixture of objective and subjective criteria. The conclusion can not be anything else, but to underline – together with the ECJ – that there is no one single and clear solution, but if there is any debate on the definition, the only way is to use a case-by-case analysis. The waste lists are only relevant for proper record-keeping and reporting, they do not provide an absolute enumeration. Here the list of hazardous wastes is a bit more reliable, but still not exclusive.

It is also very hard to make clear-cut distinctions, as waste may also be taken as good, and as according to waste strategy priorities, waste is intended to be used as much as possible for recovery operation, thus the possibility of recovery itself is not enough to leave it out from the scope of waste definition.

What is really important is that the protection of human health and the environment shall first be taken into consideration and if waste regulations provide a better position for these objectives then this shall be used, what may even mean that the original scope is extended.